



Re: CRA NPR Comments – OPPOSE UNLESS AMENDED
OCC Docket ID OCC–2022–0002;
FDIC RIN 3064-AF81;
Federal Reserve Docket No. R-1769 and RIN 7100-AG29

To Whom It May Concern:

Inland SoCal Housing Collective thanks the agencies for soliciting comments on a unified proposed Community Reinvestment Act (CRA) rule that seeks to retain key components of the CRA, modernize aspects where industry practices have outpaced the rules, and strengthen the ability of the CRA to stabilize and revitalize communities.

The Inland SoCal Housing Collective works together to create safe, decent and affordable housing outcomes for renters, homebuyers, homeowners and those experiencing homelessness through education, advocacy and access to resources in the Inland SoCal region. Our members come from both San Bernardino and Riverside Counties ranging from HUD counseling agencies, public & private service providers, developers, policy makers, bankers, organizers and community members.

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The ISCHC suggest the following changes be considered:

Maintain Separate Community Development Lending and Investment Tests

It is absolutely essential for the continued development of affordable rental housing that the CRA regulations maintain separate community development lending and investment tests. Affordable housing developments generally can access loans in the marketplace without difficulty. While loans receiving CRA credit have better terms that are indeed important, these benefits nonetheless are relatively modest. Bank investments in LIHTC, however, are irreplaceable. Banks constitute roughly 85% of the LIHTC investment market nationally and generally would not make these investments absent CRA consideration. Because purchasing LIHTC investments requires that banks take an ownership interest in a development and offers less certain returns, investing in LIHTC is a more costly and risky approach than lending. Given the opportunity to obtain equal CRA credit for lending and investing in affordable housing, banks primarily will pursue the former, drastically reducing the demand and therefore pricing for LIHTC and dramatically decreasing the production of affordable rental homes both in California and across the nation.

In the Notice, the agencies acknowledge these concerns but state, “Investments would be included in the proposed community development financing metric, and the agencies believe that the proposed metric appropriately measures both community development loans and community development investments.” Unfortunately, this response fails to address banks’ preference for lending over investing

and therefore the real impact of aggregating both in a single metric. Equal credit will not beget equal results.

Some may argue that the impact review will mitigate banks' natural preference for lending. However, this review is not well defined, not linked to clear metrics, and therefore is extremely unlikely to provide adequate incentive for banks to continue LIHTC investment at their current levels, let alone grow their investments as low-income communities desperately need.

Increase the Rigorousness of the Community Development Financing Test

The proposed community development financing test continues to rely on a fairly high level of subjectivity. The agencies should establish metrics and benchmarks for the community development financing test (or tests as we recommend above) that are equally rigorous, robust, and objective as those created for the Retail Lending Test. If the lack of current data is a barrier, the agencies should commit to establishing such metrics and benchmarks by the earliest date certain, given that banks will now be required to report necessary data.

Guidance Needed on How Performance on Ratios Corresponds to Scores

The community development finance test (or tests as we recommend above) should have guidelines illustrating how performance on the ratio corresponds to a score. The assessment should be based on the lower performing of the national or assessment area ratio.

Credit for Mortgage Backed Securities

CRA credit for investments in mortgage-backed securities (MBS) should only be counted pro-rata for the portion of the MBS that is from affordable housing or other qualifying investments and only for the first purchase of the security. Further, investments in MBS should be discounted by 50% in comparison to more traditional lending or investment in qualified CRA activities because these securities remain highly liquid and provide less public benefit.

Avoiding Double Consideration

Affordable housing should be allowed to count under other categories such as community revitalization and climate resiliency but should not be double counted as this would lead to decreases in investment.

Mixed-income Properties

We support granting full consideration to *investments* in mixed-income LIHTC properties (because the credit itself already is pro-rated) but recommend that CRA consideration be pro-rated for *lending* to such developments. A significant portion of any such loan supports market-rate units which do not serve LMI populations. Similarly, we support pro-rating consideration for both lending and investment in non-LIHTC mixed-income properties based on the percentage of affordable homes.

Partial Consideration for Non-Housing Projects Serving a Broad Range of Incomes

We oppose granting partial consideration to non-housing projects that serve a broad area where low- and moderate-income census tracts comprise a minority of total census tracts because this would be very difficult to administer in an objective and consistent manner. More importantly, this would result in a significant expansion of the activities that could qualify and thereby serve to divert limited resources from projects specifically targeted to benefit low- or moderate-income people or communities.

Activities That Support Affordable Housing in High Opportunity Areas

We agree with the proposal to create an impact review factor for activities that directly support the development of affordable housing in high opportunity areas. This will help integrate affordable housing into all communities and increase housing choice and access to opportunity for low-income households. As the 2015 Supreme Court ruling made clear, affirmatively furthering fair housing is intended to both increase access to opportunity and revitalize communities that which have struggled with historic disinvestment. We presume that bank activities related to the latter already receive CRA consideration, but to the extent that is not the case we encourage the agencies to consider a separate impact review factor for comprehensive community revitalization efforts in lower-opportunity communities.

Unsubsidized Affordable Housing

The preservation of unsubsidized affordable housing is vital to housing and community stability. However, we strongly oppose the proposal that allows CRA consideration for too broad a range of investments that would not actually preserve existing affordability for tenants. The proposed consideration will reward banks for lending to speculators who purchase, renovate, and flip unsubsidized affordable housing – leading to displacement and gentrification. In addition, in California we have seen a proliferation of rental housing acquisitions by joint powers authorities and their for-profit partners who receive a property tax abatement far outweighing the rent savings and offer units that often remain above the market average for the neighborhood. The financing of these purchases is not worthy of CRA consideration. The agencies should grant partial consideration only for those units that will be owned by mission-driven affordable housing non-profit organizations or public entities, restricted to remain affordable at the lesser of 80% of area median income or HUD's Small Area Fair Market Rent, and subject to compliance monitoring by a public entity.

Anti-displacement Protections

We appreciate the proposal's attempt to address displacement concerns by requiring that rents remain affordable in order to qualify for CRA consideration, but the agencies need to go further to discourage banks from financing displacement. The proposal appears to refuse CRA consideration for certain community development activities if they result in displacement. This requirement should be extended to all community development activity, especially the acquisition of unsubsidized affordable housing.

Banks should not receive CRA consideration unless they demonstrate that landlord borrowers are complying with tenant protection, habitability, local health code, civil rights, credit reporting act, UDAAP and other laws. Banks should adopt procedures such as the California Reinvestment Committee's Anti Displacement Code of Conduct and engage in due diligence of the owners of LLC property owners - data they already collect - to determine if there are any concerns relating to eviction, harassment, complaints, rent increases, or habitability of potential bank borrowers.

It is not enough to cease offering CRA consideration for harmful products. Banks must be penalized for harm. Bank regulators should conduct extensive outreach to community groups to investigate whether landlord borrowers are exacerbating displacement pressures or harming tenants. Because displacement often has a disparate impact on protected classes, examiners should consider disparate displacement financing to be discrimination under the expanded definition, that would also trigger CRA ratings downgrades and subject the bank to potential enforcement action.

Rental Housing in Conjunction with Government Programs

Rental Housing in Conjunction with Government Programs should be subject to requirements ensuring that activities support housing that is both affordable to and occupied by low- or moderate-income

individuals. Specifically, we recommend that all non-LIHTC rental housing receive partial consideration only for those units that will be restricted to remain affordable at the lesser of 80% of area median income or HUD's Small Area Fair Market Rent as the only uniform and objective way to assure real affordability and public benefit. We further recommend that these standards apply in all locations. The LMI housing needs in high opportunity areas are immense. Giving consideration for middle-income housing in such areas will simply dilute the incentive to meet those needs and is unwarranted.

Consideration for Community Development Activities Outside Assessment Areas

Given the statewide and regional nature of housing markets and needs, we strongly support the proposal to give consideration for statewide community development activities outside of assessment areas. The current framework results in CRA "hot spots" where banks compete vigorously for LIHTC lending and investing and "deserts" where lenders and investors are hard to find at all.

Maintain the Large Bank Threshold

The agencies should maintain the current thresholds for determining a Large Bank. According to the National Community Reinvestment Committee, the proposed change would result in 217 currently large banks being reclassified as Intermediate Banks, in which case they would only voluntarily be subject to the Community Development Financing Test. This large-scale loss of banks required to participate in CRA will result in less community benefit than would otherwise be the case and thereby undermine the benefits of CRA. Whereas these banks are used to being evaluated as Large Banks, there is no harm in keeping them in that category.

Race and CRA

At a more global level, the agencies should ensure that CRA substantially advances racial equity and closes the racial wealth gaps by requiring banks to serve all communities, especially borrowers and communities of color. Examiners should review bank performance in meeting the credit needs of communities of color, similarly to how banks are evaluated on their performance in meeting the needs of LMI borrowers and communities. Bank records in extending fairly-priced credit, financing community development, opening responsive account products and maintaining branches to and in communities of color should factor into a bank's CRA rating.

One positive aspect of the proposal is the expansion of considerations of discrimination to include transactions beyond credit and lending, such as where discrimination occurs when a consumer tries to open a bank account. However, an expanded definition of discrimination is only as helpful as the agencies' willingness and capacity to diligently look for evidence of discrimination. The General Accountability Office recently found that fair lending reviews at the Office of the Comptroller of the Currency were outdated and inconsistent. Agency enforcement of redlining or discrimination cases, and even CRA ratings downgrades for discrimination, are exceedingly rare. Agency fair lending reviews should be more extensive, should solicit and rely on feedback from all relevant federal and state agencies as well as community group stakeholders, and should be reflected more substantively on CRA Performance Evaluations. Findings of discrimination, including for disparate impacts relating to displacement financing, fee gouging, or climate degradation, should always result in automatic CRA ratings downgrades, if not outright failure.

Community Participation

Current CRA rules and implementation, as well as this proposal, do a poor job of encouraging and valuing community input. Community comments on exams are not solicited, and when provided,

ignored. Community contacts appear a relic of the past and were never bank-specific, instead asking about community needs and how banks generally were doing without rigor or accountability.

Banks and the relevant agencies should post all comments received on their websites and be required to provide a response. The agencies should actively solicit community stakeholder input on the performance of particular banks for CRA exams and during mergers. Ninety days should be provided to the public to comment.

Banks and regulators should clearly disclose contact information for key staff. Bank mergers should default to public hearings when public commenters raise concerns. Regulators should scrutinize bank merger applications to ensure that community credit needs, convenience and needs, and public benefit standards are met.

Community Benefits Agreements should be encouraged as evidence that a bank can meet applicable community needs and convenience and needs standards, and regulators should condition merger approvals on ongoing compliance with CBAs. Agencies should routinely review all existing consumer complaints, community comments, CFPB and agency investigations during CRA exams and merger reviews. In particular, community groups should be solicited for their views on bank practices relating to climate, displacement, discrimination, and other harms.

Recognizing Housing Counseling as a Vital Component of CRA Performance

Housing counseling delivered by HUD approved housing counseling agencies is a critical component in addressing the housing challenges faced by low and moderate-income people and people of color. HUD certified housing counselors work directly with the low and moderate-income populations currently targeted by the CRA and work directly with the Black, Brown, and Asian populations that we are asking regulators to include with this rulemaking. As an example, in FY 2020, 72% of the housing counseling sessions were delivered to low and moderate-income households (80% or less of area median income) and 81% were to people of color (including 44% Black, 22% Hispanic, 10% Mixed Race, 3% Asian, 1% American Indian/Alaskan Native, 1% Native Hawaiian/Pacific Islander), based on the FY 2020 HUD 9902 Reports.

We appreciate the recognition of financial literacy and housing counseling as part of the Community Reinvestment Act process. However, it is important to recognize the unique role and effectiveness of housing counseling. Financial literacy helps inform people about homeownership, homebuying, and financial management. Housing counseling has a much deeper role in helping people meet their financial goals. Housing counseling is a personalized analysis and guidance for people through the complicated, opaque, and intimidating process of purchasing a home. New entrants to the homebuying process are disadvantaged by the intimidating array of challenges of the process, are at risk of being taken advantage of by predatory or discriminatory actors, and can benefit from professional, independent advice from a trusted, HUD certified housing counselor.

HUD certified housing counselors provide several critical services for new entrants to the new homebuying market: 1) a clear and plain language evaluation of the household income, debts, household budget, credit report, credit score, employment history, 2) a practical action plan to address any challenges the household has with clear steps on how to cure problems and barriers, 3) assembly of borrower documentation to

facilitate loan application and appropriate representation of the financial position of the household, 4) financial information tailored to the situation of the household, 5) guidance on appropriate lender products to consider, and 5) importantly, the role of a trusted advisor who is not only familiar with the complexities of the mortgage process but also is an independent advisor who does not have a financial stake in the transaction and is professionally committed to guiding them responsibly through the process. ***We recommend that the final rule recognize the important role housing counseling by HUD approved housing counseling agencies provides in addressing income, race, and ethnic barriers in the market place and provide higher value in support for housing counseling in the CRA evaluation process.***

Housing counseling is a proven tool that helps consumers get mortgage-ready through financial education, pre-purchase counseling, reverse mortgage counseling, and credit history counseling. This eligible activity provides significant value for underserved population, especially low-moderate income people and people of color. While lenders recognize the value of HUD approved housing counseling agencies in addressing the troubling and persistent gaps in access to homeownership, there is a needed clarification in what form that support can take. Lender fee-for-service payments for housing counseling services are an important avenue for supporting housing counseling and a clear statement in the rule that these payments are considered eligible supports under the CRA will provide the necessary clarity. **We recommend that the final rule specifically recognize lender fee-for-service payments for housing counseling services by HUD approved housing counseling agencies as an eligible activity under the Community Reinvestment Act.**

Question 27 asks “Should consideration of financial literacy activities expand to include activities that benefit individuals and families of all income levels, including low- and moderate income, or should consideration be limited to activities that have a primary purpose of benefiting low- or moderate income individuals or families?” We view the income targeting of the Community Reinvestment Act as a vital component of the CRA and the goal of reaching underserved populations. Allowing CRA credit for people at all income levels will undermine the central purpose of the CRA. **We recommend that credit for CRA eligible activities, including housing counseling services and financial literacy activities, be limited to those populations specifically targeted by the CRA.**

Inland SoCal Housing Collective appreciates the opportunity to comment on proposed CRA rules. Thank you for considering these comments.



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